

ESTTA Tracking number: **ESTTA44888**

Filing date: **09/13/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044270
Party	Plaintiff SMART CHOICE FOOD SALES, LTD. ,
Correspondence Address	SCOTT J. FIELDS, ESQ. NATIONAL IP RIGHTS CENTER, LLC 550 TOWNSHIP LINE ROAD, SUITE 400 BLUE BELL, PA 19422
Submission	Reply in Support of Motion
Filer's Name	Scott J. Fields
Filer's e-mail	sfields@niprc.com
Signature	/Scott J. Fields/
Date	09/13/2005
Attachments	SmartChoiceReply.pdf (4 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of United States Registration No. 1,500,164
Date of Issue: August 16, 1988
Mark: THE GOLD STANDARD

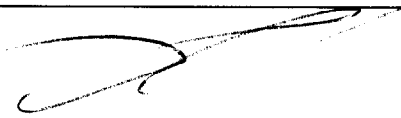
CANCELLATION No. 92,044,270	:	SMART CHOICE FOODS, LTD., Petitioner,
CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER	:	NATURE'S WAY PRODUCTS, INC., Registrant.

TRANSMITTAL LETTER

Commissioner for Trademarks
Box TTAB
2900 Crystal Drive
Arlington, VA 22202-3513
Dear Sir/Madam:

Applicant submits herewith the following documents for filing:
1. Petitioner's Reply in Support of Its Motion for Summary Judgment
2. Certificate of Service.

Respectfully submitted,

By: 
Scott J. Fields, Esquire
Attorney for Petitioner
Smart Choice Foods, Ltd.

Dated: 9/12/05

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL APPEAL BOARD

In the matter of United States Registration No. 1,500,164
Date of issue: August 16, 1988
Mark: THE GOLD STANDARD

SMART CHOICE FOODS, LTD.,	:	Cancellation No. 92,044,270
Petitioner,	:	
v	:	
NATURE'S WAY PRODUCTS, INC.,	:	CONFIDENTIAL SUBJECT
Registrant.	:	TO PROTECTIVE ORDER

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

This reply is submitted in response to the Brief filed by Nature's Way. It is now clear that a federal trademark registration has been maintained on the principal register for seventeen (17) years and that only four (4) pieces of paper exist in the possession of the Registrant which even show or discuss it.

Two (2) pieces of paper are dated this year (the exact date is not provided) and do not support a trademark usage. Magazine ads do not constitute affixation.

There is a 1994 label. No evidence has been provided that it was ever actually

affixed to a product, or when.

There is an internal Nature's Way document.

Dated: September 10, 2005

SCOTT J. FIELDS, ESQUIRE
NATIONAL IP RIGHTS CENTER, LLC
550 Township Line Rd.
Suite 400
Blue Bell, PA 19422
(610)-680-2301
Counsel for Petitioner
Smart Choice Food Sales, Ltd.



Respectfully submitted,

For seven (7) months, Registrant has stubbornly delayed the inevitable. There is not one scintilla of evidence that Nature's Way ever used "The Gold Standard." This registration should immediately be cancelled.

CONCLUSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Reply in Support of its Motion for Summary Judgment was served on Registrant via facsimile at 801-328-1707 on September 10, 2005 and by mailing a true copy thereof via First Class Mail, postage prepaid, on September 12, 2005, in an envelope addressed as follows:

Robyn L. Phillips, Esquire
Brett A. Hansen, Esquire
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111



Scott J. Fields, Esquire
Attorney for Petitioner

National IP Rights Center, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422
Phone: 610-680-2301
Fax: 610-680-2319